

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

**FRIDAY, THE FIRST DAY OF OCTOBER
TWO THOUSAND AND FOUR**

PRESENT

HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.17260 of 2004

Between:

The General Officer Commanding,
G.O.C. Head Quarters, ATNKK&G Area,
Island Grounds,
Chennai - 600 009.

..... PETITIONER

AND

M/s Suchitha & Company,
rep. by K.Ramana Reddy,
S/o Malla Reddy,
Village and Post - Parlapally,
Thimmapur Mandal, Karimnagar District

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue preferably a writ in the nature of Certiorari of any appropriate Writ, Order or

direction, calling for the records pertaining order dated 23-07-2004 in Arbitration Application No.5 of 2004 passed by learned Single Judge and quash the same.

Counsel for the Petitioner :Sri A.RAJASHEKAR REDDY

(Standing Counsel for Central Govt.)

Counsel for the Respondent : Smt. A.Chaya Devi

The Court made the following :

ORDER: (Per Hon'ble the Chief Justice)

Challenge is to the order passed by the learned single Judge in making appointment of an Arbitrator to adjudicate upon claims of the respondent company. Sri Justice K.Ramaswamy,

a retired Judge of the Supreme Court was appointed as Sole Arbitrator since the writ-petitioner, pursuant to the notice served on him, failed to make appointment of Arbitrator in terms of Arbitration Clause 23 contained in the terms of Agreement, which expired on 31-03-2004.

Learned standing counsel for the Central Government submits that the respondent-company had issued two willingness certificates duly notarised stating that it will supply over and above the contracted quantity and also furnished an affidavit to forego any claim for compensation and not to apply for arbitration and despite that, arbitration has been sought. This point was raised by the petitioner in the counter-

affidavit, but learned single Judge allowed the prayer of the respondent and proceeded to make appointment of an Arbitrator.

Clause 23 of the said agreement, which is an arbitration clause, is comprehensive enough to embrace within itself any question, dispute or indifference arising under the contract or any special condition of contract or in connection with contract except the matters, which are specially excluded, and such matters are required to be adjudicated upon through arbitration. As such, even the questions whether the respondent company in view of its willingness had given up and foregone its claim for compensation or undertaken not to seek arbitration thereby debarring it from claiming compensation, are such questions which have to be adjudicated upon through arbitration and for that reason, we find no ground to interfere with the order of the learned single Judge making appointment of Arbitrator. Further, it is not disputed that respondent's notice invoking arbitration clause and making prayer for appointment of Arbitrator was received by the petitioner and petitioner did not make appointment of Arbitrator and therefore, nothing prevented the learned single Judge in exercising his powers under the provisions of the Arbitration and Conciliation Act, 1996 and proceeding to make appointment of sole Arbitrator.

Writ Petition is accordingly dismissed.

DEVINDER GUPTA, C.J.

C.V.RAMULU, J

01-10-2004

bsc

To

- 1. The General Officer Commanding,
G.O.C. Head Quarters, ATNKK&G Area,
Island Grounds,
Chennai - 600 009.

2. 2 C.D. copies

*Form-NIC-OGS/WP{**VSR**}*